committed, attended with danger to life, limb or health, or reasonable apprehension of such violence. Extreme cruelty may be such conduct which produces mental suffering and destroys the peace of mind. *Sylvis v. Sylvis,* 11 Colo. 327; *Caruthers v. Caruthers,* 13 Ia. 266; *Cole v. Cole,* 23 Ia. 433.

EMINENT DOMAIN—PROCEEDINGS—SECOND TRIAL.—NORTHERN PAC. RY. CO. ET AL. V. CITY OF GEORGETOWN, 97 PAC. 659 (WASH.).—Where a city undertook to extend an avenue across railroad tracks, and a judgment of condemnation with an award of damages was entered, *held,* that the city could not, after abandoning the proceedings because of dissatisfaction with the award, maintain proceedings for the extension across the tracks of another avenue, located six inches south of the location of the first avenue, in order to avoid the award of damages on the first trial and to obtain a new trial on substantially the same proposition. Fullerton, J., *dissenting.*

The same rule applies in eminent domain proceedings as in a court of law, and while one award remains in full force it is conclusive and the petitioner is barred from instituting other proceedings involving the same proposition. *Sandford v. Wright,* 164 Mass. 85. And where he attempts to do so the remedy of the respondent does not lie in equity by injunction but his remedy is at law by a motion to dismiss. *Chicago, R. I. & R. Ry. Co. v. City of Chicago,* 148 Ill. 479. A discontinuance may be effected by a dismissal pending an appeal, and subsequent proceedings may be instituted to condemn another right of way over the same property, provided the dismissal was made in good faith. *Corbin v. Cedar Rapids, I. F. & N. W. Ry. Co.,* 66 Ia. 73. Statutes are to be construed as against the release of private property from subservience to public use however great the emergency. *Trustees of C. S. Ry. Co. v. Haas,* 42 Ohio St. 239. And where it is provided by statute that the failure of petitioner to pay award within a specified time shall constitute a discontinuance, new proceedings may thereafter be immediately instituted. *Ala. Midland Ry. Co. v. Newton,* 94 Ala. 443; *State v. City of Minneapolis,* 40 Minn. 483.

EQUITY—PERSONAL ASSETS—DEBT BY HUSBAND TO WIFE.—SHARPE V. MILLER, 47 So. 701 (ALA.).—*Held,* that a debt by husband to wife, secured by a mortage, is a personal asset, the title to which on the wife's death, vests in her administrator.

It is apparently settled law, that whereas a debt passes to the executor or administrator upon the death of the decedent, a mortgage given to secure the debt is also a personal asset. *Smith v. Dyer,* 16 Mass. 18; *Bird v. Keller,* 77 Me. 270. The principal case, however, is one that could not have arisen at common law, and is interesting as showing the extent to which the rule as to the invalidity of contracts and conveyances between husband and wife has been abrogated. *Kneil v. Egleston,* 140 Mass. 202. In England, money loaned by the wife, from her separate estate, to her husband, upon his promise to repay it, has long been recoverable in chancery. *Woodward v. Woodward,* 3 DeG., J. & S. 672. In this country, too, courts of equity in most jurisdictions have enforced such debts in the absence of fraud or prejudice to third parties. *Medsker v. Bonebrake,* 108 U. S. 66; *Greiner v. Greiner,* 35 N. J. Eq. 134. *Contra*: *Woodward v.*

Spurr, 141 Mass. 283. Now, also, by virtue of statute in many states, a wife may contract with her husband, or may convey and mortgage directly to him. *Mathewson v. Mathewson,* 79 Conn. 23; *Reynolds v. City National Bank,* 71 Hun. 386.

EVIDENCE—HEARSAY EVIDENCE—PEDIGREE.—SULLIVAN V. SOLIS, 114 S. W. 456 (TEX.).—*Held,* relationship and pedigree may be proved by hearsay evidence.

Declarations concerning pedigree are an exception to the rule as to the admission of hearsay evidence. *DeHoven v. DeHoven,* 77 Ind. 236. But such declarations are allowed only where they are made, before the commencement of the suit, by a deceased person, provided the person making them was related by blood to the person to whom they refer, or was the husband or wife of such person, *McKelvey, Evidence,* § 145; and they are admissible when pedigree is only relevant and not the question in issue. *Inhabitants of Brookfield v. Inhabitants of Warren,* 16 Gray (Mass.) 171. *Contra*: *N. M. & M. V. Ry. Co. v. Simcoe,* 14 Ky. Law Rep. 526. However, hearsay will not be admitted if better evidence is obtainable. *Birney v. Hann,* 10 Ky. 322.

EVIDENCE—INSPECTION BY SMELL AND TASTE.—REED V. TERRITORY, 98 PAC. 583 (OKLA.).—*Held,* that upon a prosecution for selling intoxicating liquor without a license, it was not error to permit the jury to look at and smell the contents of a bottle which had been properly identified and admitted in evidence, and which was alleged to contain whiskey.

Evidence by inspection includes all knowledge that is gained by a tribunal through its senses, either what it sees, hears, tastes or smells. *State v. Linkhaw,* 69 N. C. 214. The court generally has discretion as to what it will allow the jury to see for itself, even when both parties to a cause assent. *Marshall v. Gantt,* 15 Ala. 682. In Maine and Michigan it has been held that the jury may smell and taste liquor to determine the contents of a bottle. *People v. Kinney,* 124 Mich. 486; *State v. McCafferty,* 63 Me. 223. Grave doubts as to the propriety of this, however, have been expressed in Massachusetts and some other jurisdictions. *Commonwealth v. Brelsford,* 161 Mass. 61; *State v. Coggin,* 10 Kans. App. 455. These contrary views seem to be based on the ground that the less expert jurors would receive evidence from the more expert as to the contents of the bottle, in the privacy of the jury room, which would be against the rule that a juror cannot be allowed to give evidence to his fellow jurors without being sworn in. *Wadsworth v. Dunnam,* 117 Ala. 661; *State v. Lindgrove,* 1 Kan. App. 51.

EVIDENCE—PAROL EVIDENCE AFFECTING WRITINGS—VARYING TERMS OF CONTRACTS.—RUGGERIO V. LEUCHTENBURG, 113 N. Y. SUPP. 616.—*Held,* that where a written contract for the sale of land provided that the price should be a sum certain, but stated no other terms, so that it must be presumed that the amount was payable in cash, parol evidence to show the terms of payment varied the terms of the contract, and its admission was error.

The general rule is, that when a contract is reduced to writing the